

## UNITED STATES DISTRICT COURT

Northern District of California

Oakland Division

ANDREA CHANCELLOR,

No. C 12-01068 LB

Plaintiffs,

**ORDER DENYING DEFENDANTS'  
MOTION TO DISMISS AS MOOT**

v.

ONEWEST BANK, *et al.*,

[ECF No. 4]

Defendants.  
\_\_\_\_\_ /

Plaintiff removed this action from state court on March 2, 2012. Complaint, ECF No. 1.<sup>1</sup> On March 9, 2012, Defendants moved to dismiss Plaintiff's complaint. Motion to Dismiss, ECF No. 4. In response, Plaintiff filed a first amended complaint ("FAC") in accordance with Federal Rule of Civil Procedure 15(a)(1)(B). FAC, ECF No. 1. Rule 15 provides:

"A party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b) . . . ."

Fed. R. Civ. P. 15.

Here, Plaintiff's notice of removal and initial complaint was a pleading "to which a responsive pleading is required" – namely an answer. Complaint, ECF No. 1. Defendants chose, as is their right, to file the instant motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) instead. Motion to Dismiss, ECF No. 4. Therefore, under Rule 15(a)(1)(b), Plaintiff had twenty-one days to

<sup>1</sup> Citations are to the Electronic Case File ("ECF") with pin cites to the electronic page number at the top of the document, not the pages at the bottom.

1 file an FAC as a matter of right.

2 Because the FAC is now the operative complaint, Defendants' motion to dismiss, which  
3 addresses the allegations in the initial complaint rather than those in the FAC, is now moot. *See*,  
4 *e.g.*, *Mora v. U.S. Bank N.A.*, No. 11-6598 SC, 2012 WL 879248, at \*4 (N.D. Cal. Mar. 15, 2012)  
5 (holding that a timely filed first amended complaint that sufficiently differs in its substance from the  
6 previous complaint renders a pending motion to dismiss – which addresses the allegations in the  
7 superceded complaint – moot, and that the plaintiffs should be allowed to defend a newly filed  
8 complaint after exhausting their only amendment as a matter of course).

9 Defendants appear to acknowledge this with their filing of a motion to dismiss the first amended  
10 complaint. ECF No. 12.

11 Accordingly, the court **DENIES** as moot Defendants' motion to dismiss Plaintiff's original  
12 complaint.

13 This disposes of ECF No. 4.

14 **IT IS SO ORDERED.**

15 Dated: April 18, 2012

16   
LAUREL BEELER  
17 United States Magistrate Judge  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28